

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

Honorable B. F. McKee
County Auditor
Hidalgo County
Edinburg, Texas

Dear Sir:

Opinion No. 0-1170

Re: Land sold by the State to
an individual, and later
forfeited and repossessed
by the State is not sub-
ject to a lien for taxes
that accrued while it was
privately owned.

This is in reply to your letter, which is as fol-
lows:

"The state sold a section of land about thirty years ago which was never paid out by the purchaser. The state has now advised the present owner of the equity that they expect to cancel the sale for non-payment. County and state taxes have accumulated against this property since 1919. Please advise the status of our taxes against this piece of property when the state recovers this land."

We assume that this land was public free school land, and was sold to an individual by the State under the terms of Chapter 3, Title 86 (Articles 5306 to 5330); and that it will be forfeited and repossessed by the State under Article 5326 of that Chapter.

Such land was not subject to taxation while owned by the State prior to the sale to the individual, by virtue of Article VIII, Section 2, of the Constitution of Texas, and Article 7150, Subdivision 4, of the Revised Civil Statutes.

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There can be no doubt that the land was subject to taxation during the period it was owned by the individual.

When the land is forfeited and repossessed by the State, title vests in the State and it again has the status it had before it was sold. *Lawless vs. Wright* (Civ. App.) 86 S. W. 1040; *Houston Oil Company vs. Reese-Corriher Lumber Company* (Civ. App.) 181 S. W. 745.

As we understand it, you desire to know the status of the delinquent taxes due the county when the State repossesses the land. We think that question is answered by the rule of law in the case of *State vs. Stovall* (Civ. App.), 76 S. W. (2d) 206 (writ refused), in which it was held that land that had reverted to the State was not subject to seizure and sale to satisfy delinquent school taxes owed on it by the individual from whom the State had obtained it, and the Court, in that case, said:

"Appellant contends in this connection that, though real property may be charged with a lien for unpaid taxes duly and legally levied by the state or by a county, municipality, or school district, when thereafter the legal title to such property is acquired by or vests in the state, and the same is used by it for a public purpose, all subsequent proceedings to collect such tax by enforcing such lien are without effect and void. The issue of law presented by appellant's contention is apparently one of first impression in this state, but it is supported by the great weight of authority in other jurisdictions. *Foster v. City of Duluth*, 120 Minn. 464, 140 N. W. 129, 131, par. 2, 48 L. R. A. (N. S.) 707; *State vs. Locke*, 29 N. M. 148, 219 P. 790, 792, par. 1, 30 A. L. R. 407, and note page 413; *Reid v. State*, 74 Ind. 252; *State v. Maricopa County*, 36 Ariz. 347, 300 P. 175; *Laurel v. Weems*, 100 Miss. 335, 56 So. 451, 452, 53, Ann. Cas. 1914A, 159; *State v. Snohomish County*, 71 Wash. 320, 128 P. 667, 670, par. 2; *Smith v. Santa Monica*, 162 Cal. 221, 121 P. 920, 921; *Gachet v. City of New Orleans*, 52 La. Ann. 813, 27 So. 348;

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Gasaway v. City of Seattle, 52 Wash. 444, 100 P. 991, 993 (bottom second column), 21 L. R. A. (N. S.) 68; Independent School Dist. v. Hewitt, 105 Iowa 663, 75 N. W. 497, 498, par. 5; 26 R. C. L., p. 299, Sec. 263, and note 2; 61 C. J., p. 945, Sec. 1215. Since the judgment recovered by the appellee Rusk independent school district is for the collection of taxes, and the title to the property against which its judgment of foreclosure was rendered has passed to and vested in the State of Texas, and the same is now being used by it for public purposes, such property is not now subject to seizure and sale to satisfy such judgment."

The holding in the Stovall case was expressly approved by the Supreme Court of Texas, speaking through Justice Sharp, in the case of Childress County vs. State, 127 Tex. 343; 92 S. W. (2d) 1011.

Prior to the decisions in the Stovall case and the Childress County case, this department made a similar ruling in Opinion No. 2800, dated January 25, 1930, written by Assistant Attorney General H. Grady Chandler, during the administration of Attorney General Bobbitt, in which it was said:

"We have been unable to find any Texas authorities on the question submitted by you. Therefore, it becomes necessary to resort to the decisions of other jurisdictions. . .

"We believe . . . that under the great weight of authority in this country, your question should be answered by saying that when the Houston Independent School District acquired real estate to be used for public school purposes, the same thereby became free of any tax lien that might have previously existed against the same, and it is no longer subject to taxation."

It is our opinion that the same rule applies to the question before us

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We want it clearly understood that we have only considered this question from the standpoint of the status of the taxes when the land is forfeited and repossessed by the State; and we are not expressing an opinion as to the status of these taxes when the State re-sells this land, or the purchaser from whom it was forfeited re-purchases or redeems the land.

Our answer to your question is that when this land is forfeited and repossessed by the State, it is not subject to a lien for any taxes that accrued against it during the time it was privately owned by an individual.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Cecil C. Rotsch*
(s) Cecil C. Rotsch
Assistant

Gerald C. Mann
APPROVED AUGUST 18, 1939
(s) Gerald C. Mann
ATTORNEY GENERAL OF TEXAS

APPROVED BY OPINION COMMITTEE
BY (S) R. W. F., CHAIRMAN

CCR:fg:fw